REMARKS

Claims 37-114, 140-154, and 165-214 are pending in the application. Claims 115-139 and 155-164 have been canceled. These amendments add no new matter.

35 U.S.C. §102(b)

At pages 2-3 of the Office Action, the Examiner rejected claims 115, 116, 118-120, and 133-136 as allegedly anticipated by Tamatani et al., Proceedings of the Japanese Society for Immunology, Vol. 23, Abstract No. H-160 (1993) ("Tamatani I") or Tezuka et al., Proceedings of the Japanese Society for Immunology, Vol. 24, Abstract No. W17-14 (1994) ("Tezuka I"), each as evidenced by Tamatani et al., International Immunology, 12(1):51-55 (2000) ("Tamatani II") and Tezuka et al., Biochemical and Biophysical Research Communications, 276:335-345 (2000) ("Tezuka II").

Claims 115, 116, 118-120, and 133-136 have been canceled without prejudice, thereby obviating the present rejection. Applicants have canceled the claims to facilitate prosecution of the present application, but reserve the right to pursue the canceled subject matter in a continuation application. Applicants request that the Examiner withdraw the rejection.

35 U.S.C. §103(a)

At pages 4-5 of the Office Action, the Examiner rejected claims 115, 117, 124, and 126 as allegedly unpatentable over Tamatani I, as evidenced by Tamatani II and Tezuka II, in view of Goding, Monoclonal Antibodies: Principles and Practice, Second Edition, Academic Press, Orlando, FL, Chapter 8, pages 281-93 (1986).

At page 5 of the Office Action, the Examiner rejected claims 115, 116, 118-120, 124, 125, and 127-129 as allegedly unpatentable over Tamatani I, as evidenced by Tamatani II and Tezuka II, in view of Harlow and Lane, Antibodies: A Laboratory Manual, Cold Spring Harbor Laboratory, page 285 (1988).

At pages 6-7 of the Office Action, the Examiner rejected claims 155, 157-160, and 162-164 as allegedly unpatentable over Tezuka I, as evidenced by Tamatani II and Tezuka II, in view of Tedder et al., U.S. Patent No. 5,484,892.

Claims 115-120, 124-129, 155, 157-160, and 162-164 have been canceled without prejudice, thereby obviating the above rejections. Applicants have canceled the claims to facilitate prosecution of the present application, but reserve the right to pursue the canceled subject matter in a continuation application. Applicants request that the Examiner withdraw the rejection.

Common Ownership of Applications

At page 11 of the Office Action, the Examiner alleged that claims 37-214 are directed to an invention not patentably distinct from claims 1, 4, 5, 7, 9, 11-13, 16, 18-22, 25-27, 29, 31-33, and 36 of commonly assigned application serial no. 10/301,056. In addition, the Examiner stated that application serial no. 10/301,056 would form the basis of a rejection under 35 U.S.C. § 103(a) if the application qualifies as prior art under 35 U.S.C. § 102(f) or (g) and the allegedly conflicting inventions were not commonly owned at the time the invention in this application was made.

As detailed in the enclosed statement under 37 C.F.R. § 1.78(c), the present application and application serial no. 10/301,056 were owned by or subject to an obligation of assignment to Japan Tobacco Inc. at the time the inventions disclosed and claimed in the respective applications were made. The enclosed statement precludes a rejection under 35 U.S.C. § 103(a) based upon the use of commonly assigned application serial no. 10/301,056 as a reference under 35 U.S.C. § 102(f) or (g). In addition, the commonly assigned application does not qualify as prior art against the present application under 35 U.S.C. § 102(e).

Obviousness-Type Double Patenting

At pages 8-9 of the Office Action, the Examiner provisionally rejected claims 55-72 and 90-99 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-7, 10-15, 18-22, and 25-30 of copending and commonly assigned application serial no. 09/830,548.

At pages 9-10 of the Office Action, the Examiner rejected claims 37, 38, 40-42, 45-47, 49-51, 54, 73-76, 79-81, 84-86, 89, 100, 101, 104-108, 110-113, 115, 116, 118-120, 123-125, 127-129, 132-136, 139-141, 144-146, 149-151, 154-158, 160-163, 165, 166, 168-170, 173-175, 177-179, 182-186, 189-191, 194-196, 199-201, 204-208, and 210-213 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 25-39 and 109-315 of copending and commonly assigned application serial no. 09/859,053.

At pages 10-11 of the Office Action, the Examiner provisionally rejected claims 37-214 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1, 5, 7, 9, 11-13, 16, 18-22, 26, 27, 29, 31-33, and 36 of copending and commonly assigned application serial no. 10/301,056.

The allegedly conflicting claims of application serial nos. 09/830,548, 09/859,053, and 10/301,056 have not been patented. For this reason, the above rejections are provisional obviousness-type double patenting rejections. In view of the claim amendments presented herein and the statement submitted under 37 C.F.R. § 1.78(c), the provisional obviousness-type double patenting rejections are the only rejections remaining in the present application. Accordingly, the double patenting rejections should be withdrawn to permit the present application to issue as a patent. See MPEP § 804.I.B. Because none of application serial nos. 09/830,548, 09/859,053, or 10/301,056 have issued as a patent, no terminal disclaimer is required for the present application. Applicants respectfully request that the Examiner withdraw the rejections.